

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICKEY D. CHRISTIAN,

Defendant.

NO. CR-02-0056-EFS

**ORDER CONSTRUING MR.  
CHRISTIAN'S RULE 60(b) MOTION  
TO VACATE OCTOBER 14, 2004,  
ORDER DENYING 28 U.S.C. § 2255  
MOTION AS A SUCCESSIVE HABEAS  
PETITION AND DENYING SUCH**

BEFORE THE COURT is Rickey D. Christian's Rule 60(b) Motion to Vacate October 14, 2004, Order Denying 28 U.S.C. § 2255 Motion (Ct. Rec. 85). After reviewing the motion, applicable statutes, procedural rules, and case law, the Court is fully informed. As is explained below, the Court construes Mr. Christian's motion as a second or successive 28 U.S.C. § 2255 habeas petition and denies such motion due to lack of certification by a panel of the Ninth Circuit.

On August 5, 2005, Mr. Christian filed a Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (Ct. Rec. 80), seeking relief on the following four grounds: (1) his Sixth Amendment rights were violated by receiving a sentence beyond that allowed in the offense of conviction, 18 U.S.C. § 922(g)(1), (2) his Fifth Amendment rights - to be aware of the crime charged and possible punishments - were

1 violated because the Court found him to be an Armed Career Criminal, (3)  
2 it is unconstitutional to utilize the United States Sentencing Guidelines  
3 to sentence the Defendant, and (4) the Court improperly concluded the  
4 Defendant qualifies as an Armed Career Criminal. After analyzing these  
5 claims, the Court found the Defendant's rights were not violated and  
6 denied his habeas petition. (Ct. Rec. 84.) Approximately, one year  
7 later, Mr. Christian seeks relief from the denial of his habeas petition  
8 under Federal Rule of Civil Procedure 60(b). Specifically, Mr. Christian  
9 contends: (1) it was improper for the Defendant to be sentenced under 18  
10 U.S.C. § 924(e) when the jury did not return a verdict on this  
11 allegation, (2) it was unconstitutional for the Court to find the  
12 Defendant was an Armed Career Criminal and sentence the Defendant to more  
13 than ten years, (3) the Court's denial of his previous habeas petition  
14 was in violation of *United States v. Booker*, 125 S. Ct. 738 (2005), (4)  
15 the maximum sentence he could have received was ten years, (5) the  
16 untried 18 U.S.C. § 924(e) allegation should have been dismissed for want  
17 of prosecution, (6) his prior criminal convictions were not "crimes of  
18 violence" or "violent felonies" and consideration of such crimes violated  
19 the Ex Post Facto and Due Process clauses, and (7) he should be  
20 resentenced within the statutory maximum penalty for 18 U.S.C. §  
21 922(g) (1).

22 Federal Rule of Civil Procedure 60(b) allows the Court to modify a  
23 previous order for the following reasons: "(1) mistake, inadvertence,  
24 surprise, or excusable neglect; (2) newly discovered evidence . . . ; (3)  
25 fraud . . . ; (4) the judgment is void; . . . or (6) any other reason  
26 justifying relief from the operation of law." The Court does not find

1 any Rule 60(b) provision applicable, absent potentially subsection (6) -  
2 "any other reason justifying relief from the operation of law." Rather,  
3 the relief sought by Mr. Christian is that afforded by a habeas petition,  
4 and many of his claims were actually brought in his initial habeas  
5 petition. See 28 U.S.C. § 2255; *Ortiz v. Stewart*, 195 F.3d 520, 520-21  
6 (9th Cir. 1999); *Thompson v. Calderon*, 151 F.3d 918, 921 (9th Cir. 1998).  
7 Accordingly, Mr. Christian is subject to the second or successive motion  
8 limitation in § 2255:

9 A second or successive motion must be certified as provided in  
10 section 2244 by a panel of the appropriate court of appeals to  
contain-

11 (1) newly discovered evidence that, if proven and viewed  
12 in light of the evidence as a whole, would be sufficient to  
establish by clear and convincing evidence that no reasonable  
factfinder would have found the movant guilty of the offense;  
or

13 (2) a new rule of constitutional law, made retroactive to  
14 cases on collateral review by the Supreme Court, that was  
previously unavailable.

15 Because Mr. Christian has not received such a certificate, **IT IS HEREBY**  
16 **ORDERED:** Petitioner Rickey D. Christian's Rule 60(b) Motion to Vacate  
17 October 14, 2004, Order Denying 28 U.S.C. § 2255 Motion (**Ct. Rec. 85**),  
18 which is **CONSTRUED** as a second or successive habeas petition, is **DENIED**.

19 **IT IS SO ORDERED.** The District Court Executive is directed to

20 A. Enter this Order;

21 B. Provide a copy of this Order to the United States Attorney for  
22 the Eastern District of Washington and the Defendant/Petitioner at the  
23 following address:

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26 ///

1 Rickey Darrell Christian  
2 Reg. # 10495-085  
3 Federal Correction Institution  
4 P.O. Box 6000  
5 Glenville, W.V. 26351-6000.

6 **DATED** this 26<sup>th</sup> day of October, 2005.

7 S/ Edward F. Shea  
8 EDWARD F. SHEA  
9 United States District Judge

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